

**UNPUBLISHED**

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 03-6662**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JAMES LYNN LYNCH,

Defendant - Appellant.

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Appeal from the United States District Court for the Middle District of North Carolina, at Durham. Frank W. Bullock, Jr., District Judge. (CR-99-322, CA-02-929-1)

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Submitted: August 28, 2003

Decided: September 4, 2003

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Before NIEMEYER and SHEDD, Circuit Judges, and HAMILTON, Senior Circuit Judge.

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Affirmed in part and dismissed in part by unpublished per curiam opinion.

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James Lynn Lynch, Appellant Pro Se. Clifton Thomas Barrett, Assistant United States Attorney, Greensboro, North Carolina, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

James Lynn Lynch seeks to appeal the district court's order and judgment adopting the report and recommendation of the magistrate judge and denying relief on his motion filed under 28 U.S.C. § 2255 (2000) and his motion for downward departure. The order and judgment is not appealable unless a circuit justice or judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1) (2000). A certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (2000). A prisoner satisfies this standard by demonstrating that reasonable jurists would find that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. See Miller-El v. Cockrell, 537 U.S. 322, \_\_\_, 123 S. Ct. 1029, 1039 (2003); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Rose v. Lee, 252 F.3d 676, 683 (4th Cir. 2001). We have independently reviewed the record and conclude that Lynch has not made the requisite showing. Accordingly, as for Lynch's appeal from that part of the order denying his § 2255 motion, we deny a certificate of appealability and dismiss the appeal. We affirm that part of the order denying his motion for a downward departure. We grant his motion to proceed in forma pauperis. We dispense with oral argument because the facts and legal contentions are

adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART; DISMISSED IN PART